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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL ERWINE,

Plaintiff,

vs.

UNITED STATES OF AMERICA,
CHURCHILL COUNTY, a political subdivision
of the State of Nevada; CHURCHILL
COUNTY SHERIFF BENJAMIN TROTTER;
UNITED STATES OF AMERICA, ZACHARY
WESTBROOK, JON LEONARD, MICHEL
HALL, GENE BURK; and DOES I through X
inclusive,

Defendants.

Case No.: 3:24-cv-00045-MMD-CSD

**CHURCHILL COUNTY AND BEN
TROTTER'S OPPOSITION TO
PLAINTIFF'S MOTION TO FILE
SURREPLY TO DEFENDANTS'
MOTION TO DISMISS AND MOTION
FOR SANCTIONS [Doc. #28]**

COME NOW, Defendants CHURCHILL COUNTY and BENJAMIN TROTTER, by and through their attorneys, Thorndal Armstrong, PC, and pursuant to Local Rule 7-2(b), hereby file their opposition to Plaintiff's Motion to File Surreply to Defendants' Motion to Dismiss (Doc. No. 28). There are no legitimate grounds for granting the Plaintiff's motion in this regard, as the Defendants did not raise any new matters or present any new evidence in their reply brief (Doc. No. 26). Rather, the arguments set forth in Defendants' reply were directly responsive to the arguments raised in Plaintiff's opposition to Defendants' Motion to Dismiss. As such, the Plaintiff's Motion should be denied.

I

LEGAL ANALYSIS**A. PLAINTIFF SHOULD BE DENIED LEAVE TO FILE A SUR-REPLY TO CHURCHILL COUNTY AND BEN TROTTER'S MOTION TO DISMISS.**

Local Rule 7-2(b) allows a motion, a response, and a reply. “Surreplies are not permitted without leave of court; motions for leave to file a surreply are discouraged.” *See, Tesla Inc. v. Tripp*, 487 F. Supp.3d 953 (D. Nev. 2020). “Because surreplies are discouraged, ‘[o]nly the most exceptional or extraordinary circumstances warrant permitting a surreply to be filed.’” *Id.* at 969 (internal citation omitted). Here, the Defendants presented no new evidence or new matters in their reply in support of their Motion to Dismiss which would warrant granting Plaintiff leave to file a sur-reply under the circumstances. To the contrary, the Defendants simply responded to the arguments raised by Plaintiff in his opposition to the Defendants’ dispositive motion. There are no grounds to permit Plaintiff to file a sur-reply here nor did the Defendants offer any new evidence whatsoever which would justify the Plaintiff’s request that the Court refuse to consider any matters set forth in the Defendants’ reply. Accordingly, Plaintiff’s motion to file a sur-reply should be denied, as should Plaintiff’s alternative request that the Court disregard any matters set forth in Defendants’ reply brief.

As the Court is aware, the Defendants’ Motion to Dismiss (Doc. No. 18) is based primarily upon the doctrine of res judicata. As set forth in the Defendants’ Motion, the allegation that Benjamin Trotter and Churchill County violated the Plaintiff’s liberty interest under the Due Process Clause of the Fourteenth Amendment of the United States Constitution has already been litigated to conclusion in Case No. 3:18-cv-00461. Despite this fact, Erwine has filed the identical legal claims in the instant case as were fully litigated to conclusion in the prior case. In addition to the fact that res judicata bars Plaintiff’s liberty interest claims, and as set forth in Defendants’ Motion to Dismiss, these federal claims are further barred by the two-year statute of limitations applicable to same. In connection with their Motion to Dismiss, the Defendants pointed out in their argument that the claims brought against Churchill County and Ben Trotter in this case are based upon the **identical** facts as were set forth in Case No. 3:18-cv-

1 00461, in which the Ninth Circuit Court of Appeals held that the County and Trotter did not
2 violate the Plaintiff's constitutional rights under the Fourteenth Amendment.

3 In connection with their legal arguments, the Defendants pointed out that Plaintiff has
4 alleged no new factual allegations in his new Complaint in terms of the alleged conduct of Ben
5 Trotter and/or Churchill County.

6 Plaintiff was certainly at liberty to dispute the Defendants' argument that no new facts
7 have been presented in his new Complaint which would suggest that Ben Trotter and/or
8 Churchill County engaged in any new actions towards him which were not otherwise litigated in
9 the prior case. He did not do so. In their reply brief, Defendants pointed out the failure of
10 Plaintiff to have alleged any new conduct on the part of Trotter and/or Churchill County in his
11 opposition and discussed the implications of that failure to the Plaintiff's claims in this case. The
12 Defendants did not offer any new evidence in this regard and simply pointed out the failure of
13 Plaintiff to have stated claims, from the face of his new Complaint, upon which relief may be
14 granted or to have offered any such evidence in his opposition.

15 Defendants' citation to the Ninth Circuit's recent holding in *Chaudhry v. Aragon*, 68 F.4th
16 1161 (9th Cir. 2023), and the legal arguments related to same, were made in direct response to the
17 argument raised by Plaintiff in his opposition to the effect that a hypothetical question posed by
18 Judge Jacqueline Nguyen during oral arguments in the prior case might somehow allow Plaintiff
19 to avoid dismissal of his new case for failure to state a claim upon which relief may be granted.
20 Defendants presented no new evidence or new matters in their reply in this regard which would
21 justify allowing Plaintiff to file a sur-reply or granting his request that the Court disregard any
22 arguments made by the Defendants in same. Further, Defendants' reference to certain factual
23 allegations made by Plaintiff in his Complaint, such as those pertaining to Plaintiff's own
24 dissemination of the Trotter memorandum to law enforcement agencies across the country, were
25 made in direct response to the arguments offered by Plaintiff in his opposition to the Defendants'
26 Motion to Dismiss. The Defendants raised no new evidence or matters in their reply but, rather,
27 directly responded to the arguments raised by Plaintiff in his opposition.

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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of Thorndal Armstrong, PC, and that on this date I caused the foregoing **CHURCHILL COUNTY AND BEN TROTTER'S OPPOSITION TO PLAINTIFF'S MOTION TO FILE SURREPLY TO DEFENDANTS' MOTION TO DISMISS AND MOTION FOR SANCTIONS** to be served on all parties to this action by:

_____ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

 X United States District Court CM/ECF system

_____ personal delivery

_____ electronic means (fax, electronic mail, etc.)

_____ Federal Express/UPS or other overnight delivery

fully addressed as follows:

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DATED this 21st day of March, 2024.

 /s/ Laura Bautista
An employee of Thorndal Armstrong, PC